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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/052,532 | 01/18/2002 | Ronald D. Matich | RDM-FaceMask1 | 3231 |
| 22476 | 7590 | 02/08/2005 | EXAMINER | |
| HAUGEN LAW FIRM SUITE 1130 - TCF TOWER 121 SOUTH EIGHTH STREET MINNEAPOLIS, MN 55402 | | | PATEL, MITAL B | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3743 | |

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-------------------------------|---|--|
| Office Action Summary | Application No. 10/052,532 | Applicant(s) CA MATICH, RONALD D. | |
| | Examiner Mital B. Patel | Art Unit 3743 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 28-42 is/are pending in the application.
- 4a) Of the above claim(s) 2-9, 13-17, 28-32, 34-39, 41 and 42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 10-12, 33 and 40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of claims 1, 10, 11, 12, 33 and 40 in the reply filed on 11/22/04 is acknowledged. The traversal is on the ground(s) based on 37 CFR 1.141 and 37 CFR 1.116. This is not found persuasive because although an election need not be restricted to a single species, the Examiner may still require election to a single species if the search and examination of each and every claimed species is deemed burdensome for the Examiner. As such the Examiner limited election to a single species. In response to Applicant's concerns regarding the number of election/restriction requirements made in the case, it should be noted that these requirements were made as a result of addition of claims by Applicant for consideration on the merits.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Hollander et al (WO 99/65347).

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4. **As to claim 1**, Hollander et al teaches a sealed face mask **8**, comprising: a covering (**See Figs. 7 and 8**) for the nostrils and mouth; wherein the covering includes a periphery completely surrounding the nostrils and mouth, wherein the periphery is structured to extend from a first position on the bridge of the nose above the nostrils to the right side of the nose; from said right side of the nose to a position on the front of the face beyond the right side of the mouth, from said position beyond the right side of the mouth to a position on the front of the face below the lower lip and on the front of the chin, from said position below the lower lip to a position on the front of the face beyond the left side of the mouth, from said position beyond the left side of the mouth to the left side of the nose, from said left side of the nose back to said first position on the bridge of the nose such that the nostrils and mouth are completely surrounded; wherein the covering comprises a portion projecting outwardly of the mouth, with the portion projecting outwardly of the mouth being within the periphery and being convex relative to an exterior of the portion (**See Fig. 9**); wherein the covering is structured to permit air into and out of the covering; wherein the covering is structured to minimize a flow of substances into and out of the covering; and a seal **12,20** on the periphery, wherein the seal includes an adhesive that sticks to skin to minimize an amount of substances that access the nostrils and mouth via a route between the periphery and the face and to maximize the amount of substances that are trapped by the covering (**See Pages 3 and 4; also Page 6**).

5. **As to claim 10**, Hollander et al teaches a mask further comprising a neutralizing agent engaged to the covering where the covering is structured to permit air into the

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covering to maximize the chances that substances passing through the covering are rendered less harmful by the neutralizing agent (**See Page 7, lines 10-17**).

6. **As to claim 12**, Hollander et al teaches a sealed face mask **8**, comprising: a covering (**See Figs. 7 and 8**) for the nostrils and mouth; wherein the covering includes a periphery completely surrounding the nostrils and mouth, wherein the periphery is structured to extend from a first position on the bridge of the nose above the nostrils to the right side of the nose, from said right side of the nose to a position on the front of the face beyond the right side of the mouth, from said position beyond the right side of the mouth to a position on the front of the face below the lower lip and on the front of the chin, from said position below the lower lip to a position on the front of the face beyond the left side of the mouth, from said position beyond the left side of the mouth to the left side of the nose, from said left side of the nose back to said first position on the bridge of the nose such that the nostrils and mouth are completely surrounded; wherein the covering comprises a portion projecting beyond the mouth, with the portion projecting beyond the mouth being within the periphery and being convex relative to an exterior of the portion (**See Fig. 9**); wherein the covering is structured to permit air into and out of the covering, wherein the covering is structured to minimize a flow of substances into and out of the covering (**See Pages 3 and 4; also Page 6**); a neutralizing agent engaged to the covering where the covering is structured to permit air into the covering to maximize the chances that substances passing through the covering are rendered less harmful by the neutralizing agent (**See Page 7, lines 10-17**); and a seal **12,20** on the periphery, wherein the seal includes an adhesive that sticks to skin to minimize an

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amount of substances that access the nostrils and mouth via a route between the periphery and the face and to maximize the amount of substances that are trapped by the covering, wherein the adhesive extends entirely about the periphery.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hollander et al (WO 99/65347) in view of Braunroth (US 4,503,851).

9. **As to claim 11**, Hollander et al teaches essentially all of the limitations except for wherein the mask further comprising activated charcoal engaged to the covering where the covering is structured to permit air into and out of the covering to maximize the chances that substances passing through the covering are rendered less harmful by the activated charcoal. However, Braunroth teaches a mask comprising an activated charcoal/carbon to mask odors. Therefore, it would be obvious to one of ordinary skill in the art to modify the mask of Hollander to include an activated charcoal/carbon in order to mask unpleasant odors (**See also page 7, lines 10-17 of Hollander which discloses that other substances may be utilized within the mask to neutralize smoke, filter particulates, or to serve any other useful function**).

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10. Claims 33 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hollander et al (WO 99/65347) in view of Leise, Jr. et al (US 6,740,067).


11. **As to claims 33 and 40**, Hollander et al teaches essentially all of the limitations except for wherein the adhesive includes a styrene-olefin-styrene block copolymer. teaches a pressure sensitive adhesive that contains a styrene-olefin-styrene block copolymer to provide a rubbery constituent that contributes to the barrier material's integrity upon hydration, its non-flowability, its resistance to compressive deformation, and its recoverability following such deformation (**See Col. 4, lines 46-52 of Leise, Jr. et al**). Therefore, it would have been obvious to one of ordinary skill in the art to include a contains a styrene-olefin-styrene block copolymer in the pressure sensitive adhesive of Hollander et al to provide a rubbery constituent that contributes to the barrier material's integrity upon hydration, its non-flowability, its resistance to compressive deformation, and its recoverability following such deformation.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mital B. Patel whose telephone number is 571-272-4802. The examiner can normally be reached on Monday-Friday (11:00-7:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mital B. Patel
Examiner
Art Unit 3743

2/3/05